STATE OF MICHIGAN

COURT OF APPEALS

LINDSEY YOUNG,

Plaintiff-Appellant,

V

AMERICAN SECURITY INSURANCE COMPANY, a/k/a ASSURANT SOLUTIONS,

Defendant-Appellee.

UNPUBLISHED
January 11, 2007

No. 269383
Wayne Circuit Court
LC No. 05-518224-CK

Before: White, P.J., and Zahra and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court's order granting defendant's motion for summary disposition and dismissing the case. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff purchased a dwelling for $54,000. Ocwen Federal Bank held the mortgage on the property, and secured fire insurance for the property from defendant. Plaintiff was listed as an additional insured on the policy. Defendant's policy provided coverage of $75,000 for the dwelling and $30,000 for the dwelling's contents.

Two separate fires occurred at plaintiff's residence, the first on June 18, 2004, and the second on June 25, 2004. The June 25, 2004, fire resulted in a total loss of the dwelling. Prime Adjusting Service estimated the damage from the first fire at $44,005.06, and the damage from the second fire at $189,487.07. The reports prepared by Prime Adjusting Service listed the damage that occurred in each room on each occasion. Defendant's adjuster estimated the cost of repair at $123,211.59, and the actual cash value of the damage at $97,842.92.

Defendant paid benefits of $30,000 for the dwelling's contents, and $68,275 for the dwelling.[1] Plaintiff's counsel protested that defendant had combined the damages into a single loss. By letter dated March 17, 2005, defendant indicated that it had "separated the damages" from the two fires, and paid an additional $1,510.81 for losses to the dwelling.

[1] Defendant withheld $6,725 as security for demolition of the dwelling. MCL 500.2845.

Plaintiff made a written demand for an appraisal, as authorized by MCL 500.2833(1)(m). Defendant did not respond to the demand. Thereafter, plaintiff filed suit alleging breach of contract based on defendant's adjustment of two separate losses as one loss, resulting in the improper application of policy limits; consequential damages; unfair trade practices under the Uniform Trade Practices Act, MCL 500.2001 *et seq*.; and failure to appoint an appraiser.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that the policy language was clear and unambiguous and provided for a single payment of $75,000 in the event of the total loss of the dwelling. Defendant relied on Condition 6A of the policy, which provided that covered property losses would be settled at replacement cost, but not exceeding the policy limit. This condition also stated that if the full replacement cost totaled in excess of $1,000 or 5% of the limit of liability, defendant would pay no more than the actual cash value until actual repair or replacement was completed.

In response, plaintiff asserted that the separate fires damaged different areas of the dwelling, and therefore resulted in separate losses. Plaintiff asserted that the plain language of Condition 9 of the policy, "that any claim under this policy shall not reduce the amount of insurance . . . for any other loss occasion," indicated that a payment of up to $75,000 was due for each loss. Plaintiff contended that defendant's position that a first loss must be repaired or replaced before the stated limit was available for a second loss found no support in the language of the policy. Further, plaintiff asserted that defendant's statement in its letter of March 17, 2005, that it had "separated the damages of the first fire and second fire" constituted an admission that two separate losses had occurred. MRE 801(d)(2).

The circuit court granted defendant's motion for summary disposition, noting that the reports prepared by Prime Adjusting Service indicated that the first fire did extensive damage to the first and second levels of the dwelling, and that the second fire destroyed the dwelling.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001). An insurance contract should be read as a whole and meaning given to all terms. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566-567; 489 NW2d 431 (1992). An insurance contract is clear and unambiguous if it fairly admits of but one interpretation. *Farm Bureau Mutual Ins Co v Nikkel*, 460 Mich 558, 566; 596 NW2d 915 (1999). An insurance contract is ambiguous if, after reading the entire contract, its language can reasonably understood in different ways. *Id.* at 566-567. Ambiguities are to be construed against the insurer. *State Farm Mutual Auto Ins Co v Enterprise Leasing Co*, 452 Mich 25, 38; 549 NW2d 345 (1996).

We reverse. Defendant's policy provided coverage of $75,000 for the dwelling and $30,000 for the contents of the dwelling. It is undisputed that two fires occurred in plaintiff's dwelling, the second of which resulted in a total loss of the home. Condition 9 of the policy provides that payment of benefits for a loss would not reduce payment of benefits for a subsequent loss:

> 9. Reinstatement: It is understood and agreed that any claim under this policy shall not reduce the amount of insurance stated on the Declarations page for any other loss occasion.

The dispute in this case centers on how many losses plaintiff incurred as a result of the fires. The reports prepared by Prime Adjusting Service indicated that the first fire caused damage primarily to the dining room and sun room on the first floor, with smoke and soot damage (primarily priming, painting and sealing) on the rest of the first floor and second floor, and that the second fire resulted in extensive structural damage, and destroyed the dwelling.

Two successive losses occurred. Condition 9 of the policy clearly states that a claim under the policy "shall not reduce the amount of insurance stated on the Declarations page for any other loss occasion." This is not to say that plaintiff is entitled to recover the amount of the replacement cost calculated for each fire. The second loss is properly limited by the diminished value of the property after the first loss.[2] A question of fact existed regarding the extent of damage caused by the second fire.

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[2] See Couch on Insurance, 3d ed, § 175.16, which states:

> § 175.16- Modern View That Policy Limit Applies to Each Loss
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> Contrary to the view that total amount available for recovery for each successive loss is reduced by the amount of prior losses, other jurisdictions hold that the insured may recover up to the face value of the policy regardless of the number of successive losses provided that the insured sustains an actual loss.
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> Observation: This rule has practical limits. If an initial loss lowers the value of the property, and the property is not restored to its prior value by the by the time the second loss occurs, *the second loss is potentially "limited" not by reduction of the applicable policy limit, but by the diminished value of the covered property.*
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> *Policy provisions may expressly address this result, as where the insured purchases a policy which expressly states that losses thereunder will not reduce the amount available for each covered occurrence*; however, the policy may also provide that the insurer may terminate the policy within a specified period after the initial loss, and where termination occurs in a timely fashion, the insured's recovery for a subsequent loss may be limited to the recovery of unearned premiums during the cancellation period.
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> Observation: Where the insurer is liable for successive losses, such liability may also dictate the insurer's ability to offset a separate deductible as to each loss.

We reverse the grant of summary disposition to defendant and remand to the circuit court for proceedings to determine plaintiff's damages, if any, in excess of what defendant has already paid, i.e., $68,275.00 and $1,510.81.

Reversed.

/s/ Helene N. White
/s/ Kirsten Frank Kelly